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8 **BEFORE THE**
9 **CALIFORNIA BOARD OF ACCOUNTANCY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. AC-2013-58

13
14 **STEVEN MARTINEZ**
15 **5830 Oberlin Drive, Suite 300**
16 **San Diego, CA 92121-4717**

DEFAULT DECISION AND ORDER

17 **Certified Public Accountant**
18 **Certificate No. 64798**

[Gov. Code, §11520]

19 Respondent.

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21 **FINDINGS OF FACT**

22 1. On or about May 17, 2013, Complainant Patti Bowers, in her official capacity as the
23 Executive Officer of the California Board of Accountancy, Department of Consumer Affairs,
24 filed Accusation No. AC-2013-58 against Steven Martinez (Respondent) before the California
25 Board of Accountancy. (Accusation attached as Exhibit A.)

26 2. On or about August 6, 1993, the California Board of Accountancy (CBA) issued
27 Certified Public Accountant Certificate No. 64798 to Respondent. The Certified Public
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1 Accountant Certificate was in full force and effect at all times relevant to the charges brought in
2 Accusation No. AC-2013-58 and will expire on December 31, 2013, unless renewed.

3 3. On or about May 21, 2013, Respondent was served by Certified and First Class Mail
4 copies of the Accusation No. AC-2013-58, Statement to Respondent, Notice of Defense, Request
5 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
6 11507.7) at Respondent's address of record which, pursuant to California Code of Regulations,
7 title 16, section 3, is required to be reported and maintained with the CBA. Respondent's address
8 of record was and is:

9
10 5830 Oberlin Drive, Suite 300
San Diego, CA 92121-4717.

11 Additional copies of these documents were mailed to:

12 Steven Martinez, 25420-298
13 FCI LOMPOC
FEDERAL CORRECTION INSTITUTION
14 3600 Guard Road
Lompoc, CA 93436

15 4. Service of the Accusation was effective as a matter of law under the provisions of
16 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
17 124.

18 5. Government Code section 11506 states, in pertinent part:

19 (c) The respondent shall be entitled to a hearing on the merits if the respondent
20 files a notice of defense, and the notice shall be deemed a specific denial of all parts
21 of the accusation not expressly admitted. Failure to file a notice of defense shall
constitute a waiver of respondent's right to a hearing, but the agency in its discretion
may nevertheless grant a hearing.

22 6. Respondent failed to file a Notice of Defense within 15 days after service upon him
23 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
24 AC-2013-58.

25 7. California Government Code section 11520 states, in pertinent part:

26 (a) If the respondent either fails to file a notice of defense or to appear at the
27 hearing, the agency may take action based upon the respondent's express admissions
28 or upon other evidence and affidavits may be used as evidence without any notice to
respondent.

8. Pursuant to its authority under Government Code section 11520, the CBA finds Respondent is in default. The CBA will take action without further hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as taking official notice of all the investigatory reports, exhibits and statements contained therein on file at the CBA's offices regarding the allegations contained in Accusation No. AC-2013-58, finds that the charges and allegations in Accusation No. AC-2013-58, are separately and severally, found to be true and correct by clear and convincing evidence.

9. Taking official notice of its own internal records, pursuant to Business and Professions Code section 5107, it is hereby determined that the reasonable costs for Investigation and Enforcement is \$19,986.91 as of July 17, 2013.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Steven Martinez has subjected his Certified Public Accountant Certificate No. 64798 to discipline.

2. The agency has jurisdiction to adjudicate this case by default.

3. The California Board of Accountancy is authorized to revoke Respondent's Certified Public Accountant Certificate based upon the following violations alleged in the Accusation which are supported by the evidence contained in the Default Decision Evidence Packet in this case:

a. Respondent has subjected his license to disciplinary action under sections 490 and 5100, subdivision (a) of the Business and Professions Code (Code) in that he was convicted of crimes that are substantially related to the qualifications, functions, and duties of a Certified Public Accountant, including mail fraud, procuring a false tax return, fraudulent use of a social security number of another person, aggravated identity theft, making a false tax return, money laundering, witness tampering by attempted murder.

b. Respondent has subjected his license to disciplinary action under section 5100, subdivision (c) of the Code in that he knowingly engaged in acts of dishonesty and fraud.

c. Respondent has subjected his license to disciplinary action under section 5100, subdivision (i) of the Code in that he knowingly engaged in fiscal dishonesty and/or breaches of

1 fiduciary duty by preparation of false tax returns with the intent to defraud his clients, the Internal
2 Revenue Service (IRS) and Franchise Tax Board (FTB).

3 d. Respondent has subjected his license to disciplinary action under section 5100,
4 subdivision (j) of the Code in that he knowingly participated in the preparation, publication,
5 and/or dissemination of false, fraudulent, or materially misleading reports and tax returns to the
6 IRS, FTB and his clients.

7 e. Respondent has subjected his license to disciplinary action under section 5100,
8 subdivision (k) of the Code in that he knowingly engaged in embezzlement, theft,
9 misappropriation of funds or property or obtaining money or property or other valuable
10 consideration by fraudulent means or false pretenses.

11 f. Respondent has subjected his license to disciplinary action under section 5100 of the
12 Code for unprofessional conduct in that he attempted to kill and murder witnesses in his criminal
13 proceeding, *U.S. v. Martinez*.

14 g. Respondent has subjected his license to disciplinary action under section 5100,
15 subdivision (g) of the Code when he failed to report his felony conviction, within 30 days of its
16 occurrence, as required by Code section 5063.

17 ORDER

18 IT IS SO ORDERED that Certified Public Accountant Certificate No. 64798, heretofore
19 issued to Respondent Steven Martinez, is revoked.

20 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
21 written motion requesting that the Decision be vacated and stating the grounds relied on within
22 seven (7) days after service of the Decision on Respondent. The agency in its discretion may

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1 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

2 This Decision shall become effective on August 31, 2013.

3 It is so ORDERED August 1, 2013

4
5 Leslie J. Lammone
6 FOR THE CALIFORNIA BOARD OF
7 ACCOUNTANCY
8 DEPARTMENT OF CONSUMER AFFAIRS

9 70734027.DOC

10 DOJ Matter ID:SD2011801058

11 Attachment:

12 Exhibit A: Accusation

Exhibit A

Accusation

1 KAMALA D. HARRIS
Attorney General of California
2 JAMES M. LEDAKIS
Supervising Deputy Attorney General
3 CARL W. SONNE
Deputy Attorney General
4 State Bar No. 116253
110 West "A" Street, Suite 1100
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-3164
7 Facsimile: (619) 645-2061
Attorneys for Complainant

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9 **BEFORE THE**
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. AC-2013-58

12 **STEVEN MARTINEZ**
13 **5830 Oberlin Drive, Suite 300**
14 **San Diego, CA 92121-4717**

ACCUSATION

15 **Certified Public Accountant**
16 **Certificate No. 64798**

Respondent.

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18 Complainant alleges:

19 **PARTIES**

20 1. Patti Bowers (Complainant) brings this Accusation solely in her official capacity as
21 the Executive Officer of the California Board of Accountancy, Department of Consumer Affairs.

22 2. On or about August 6, 1993, the California Board of Accountancy issued Certified
23 Public Accountant Certificate Number 64798 to Steven Martinez (Respondent). The Certified
24 Public Accountant Certificate was in full force and effect at all times relevant to the charges
25 brought herein and will expire on December 31, 2013, unless renewed.

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4. Section 5109 states:

STATUTORY PROVISIONS

(b) Considering suspension or revocation of a license under Section 490.

7. Section 493 of the Code states:

As used in this section, “license” includes “certificate,” “permit,” “authority,” and “registration.”

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8. Section 5063 of the Code states:

(a) A licensee shall report to the board in writing of the occurrence of any of the following events occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of these events:

(1) The conviction of the licensee of any of the following:

(A) A felony.

(B) Any crime related to the qualifications, functions, or duties of a public accountant or certified public accountant, or to acts or activities in the course and scope of the practice of public accountancy.

(C) Any crime involving theft, embezzlement, misappropriation of funds or property, breach of a fiduciary responsibility, or the preparation, publication, or dissemination of false, fraudulent, or materially misleading financial statements, reports, or information.

As used in this section, a conviction includes the initial plea, verdict, or finding of guilt, pleas of no contest, or pronouncement of sentence by a trial court even though that conviction may not be final or sentence actually imposed until appeals are exhausted.

.....

(d) The report required by subdivisions (a), (b), and (c) shall be signed by the licensee and set forth the facts which constitute the reportable event. If the reportable event involves the action of an administrative agency or court, then the report shall set forth the title of the matter, court or agency name, docket number, and dates of occurrence of the reportable event.

(e) A licensee shall promptly respond to oral or written inquiries from the board concerning the reportable events, including inquiries made by the board in conjunction with license renewal.

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9. Section 5100 of the Code states:

After notice and hearing the board may revoke, suspend, or refuse to renew any permit or certificate granted under Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or may censure the holder of that permit or certificate for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

(a) Conviction of any crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant.

...

(c) Dishonesty, fraud, gross negligence, or repeated negligent acts committed in the same or different engagements, for the same or different clients, or any combination of engagements or clients, each resulting in a violation of applicable professional standards that indicate a lack of competency in the practice of public

1 accountancy or in the performance of the bookkeeping operations described in
2 Section 5052.

3 (g) Willful violation of this chapter or any rule or regulation promulgated by the
4 board under the authority granted under this chapter.

5 (i) Fiscal dishonesty or breach of fiduciary responsibility of any kind.

6 (j) Knowing preparation, publication, or dissemination of false, fraudulent, or
7 materially misleading financial statements, reports, or information.

8 (k) Embezzlement, theft, misappropriation of funds or property, or obtaining
9 money, property, or other valuable consideration by fraudulent means or false
10 pretenses.

11 10. Section 5106 states:

12 A plea or verdict of guilty or a conviction following a plea of nolo contendere is
13 deemed to be a conviction within the meaning of this article. The record of the
14 conviction shall be conclusive evidence thereof. The board may order the certificate
15 or permit suspended or revoked, or may decline to issue a certificate or permit, when
16 the time for appeal has elapsed, or the judgment of conviction has been affirmed on
17 appeal or when an order granting probation is made, suspending the imposition of
18 sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of
19 the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea
20 of not guilty, or setting aside the verdict of guilty or dismissing the accusation,
21 information or indictment.

22 REGULATORY PROVISIONS

23 11. California Code of Regulations, title 16, section 5 states:

24 A licensee of the State Board of Accountancy engaged in the practice of public
25 accountancy as defined in Section 5051 of the Business and Professions Code or
26 engaged in an occupation in which the licensee renders services of the type performed
27 by certified public accountants or public accountants or renders other professional
28 services shall observe and is subject to rules and regulations of the State Board of
Accountancy in the conduct of such activity. For purposes of Section 5, the term
"activity" includes but is not limited to bookkeeping, financial planning, investment
planning, tax services and management services.

12. California Code of Regulations, title 16, section 99 states:

For the purposes of denial, suspension, or revocation of a certificate or permit
pursuant to Division 1.5 (commencing with Section 475) of the Business and
Professions Code, a crime or act shall be considered to be substantially related to the
qualifications, functions or duties of a certified public accountant or public accountant
if to a substantial degree it evidences present or potential unfitness of a certified
public accountant or public accountant to perform the functions authorized by his or
her certificate or permit in a manner consistent with the public health, safety, or
welfare. Such crimes or acts shall include but not be limited to those involving the
following:

(a) Dishonesty, fraud, or breach of fiduciary responsibility of any kind;

1 (b) Fraud or deceit in obtaining a certified public accountant's certificate or a
2 public accountant's permit under Chapter 1, Division III of the Business and
Professions Code;

3 (c) Gross negligence in the practice of public accountancy or in the
4 performance of the bookkeeping operations described in Section 5052 of the code;

5 (d) Violation of any of the provisions of Chapter 1, Division III of the Business
and Professions Code or willful violation of any rule or regulation of the board.

6 13. California Code of Regulations, title 16, section 99.1 states:
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8 When considering the denial of a certificate or permit under Section 480 of the
Business and Professions Code, the suspension or revocation of a certificate or permit
9 or restoration of a revoked certificate under Section 11522 of the Government Code,
the board, in evaluating the rehabilitation of the applicant and his present eligibility
10 for a certificate or permit, will consider the following criteria:

11 (1) Nature and severity of the act(s) or offense(s).

12 (2) Criminal record and evidence of any act(s) committed subsequent to the
act(s) or offense(s) under consideration which also could be considered as grounds for
13 denial, suspension or revocation.

14 (3) The time that has elapsed since commission of the act(s) or offense(s)
referred to in subdivision (1) or (2).

15 (4) The extent to which the applicant or licensee has complied with any terms
of parole, probation, restitution, or any other sanctions lawfully imposed against the
16 applicant or licensee.

17 (5) If applicable, evidence of expungement proceedings pursuant to Section
1203.4 of the Penal Code.

18 (6) Evidence, if any, of rehabilitation submitted by the applicant or licensee.
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20 COSTS

21 14. Section 5107, subdivision (a), of the Code states:

22 The executive officer of the board may request the administrative law judge, as
part of the proposed decision in a disciplinary proceeding, to direct any holder of a
23 permit or certificate found to have committed a violation or violations of this chapter
to pay to the board all reasonable costs of investigation and prosecution of the case,
24 including, but not limited to, attorneys' fees. The board shall not recover costs
incurred at the administrative hearing.

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1 **FIRST CAUSE FOR DISCIPLINE**

2 (April 16, 2013 Criminal Conviction for Mail Fraud, Tax Fraud,
3 Procuring a False Tax Return, Fraudulent Use of a Social Security Number,
4 Money Laundering, Aggravated Identity Theft, Use of Interstate Commerce in Murder for
5 Hire, Witness Tampering (Attempted Murder for Hire) in 2005 to 2008, and 2012)

6 15. Respondent has subjected his license to disciplinary action under sections 490 and
7 5100, subdivision (a) of the Code in that he was convicted of crimes that are substantially related
8 to the qualifications, functions, and duties of a Certified Public Accountant. The circumstances
9 are as follows:

10 a. On or about April 16, 2013, in a criminal proceeding entitled *United States of*
11 *America v. Steven Martinez*, in United States District Court, Southern District of California, case
12 number 11CR1445-WQH (*U.S. v. Martinez*), the court entered judgment on an order accepting
13 Respondent's plea of guilty to felony Counts 4, 7, 21, 33, 47, 49, 50-53, 54 and 55 of the
14 Superseding Indictment for: (i) mail fraud in violation of Title 18 of the United States Code,
15 section 1341; (ii) procuring a false tax return in violation of Title 26 of the United States Code,
16 section 7206(2); (iii) fraudulent use of Social Security number of another person in violation of
17 Title 42 of the United States Code, section 408, subdivision (a)(8); (iv) for aggravated identity
18 theft in violation of Title 18 of the United States Code, section 1028A; (v) making a false tax
19 return in violation of Title 26 of the United States Code, section 7206, subdivision (a); (vi) money
20 laundering in violation of Title 18 of the United States Code, section 1957; (vii) witness
21 tampering (attempted murder) in violation of Title 18 of United States Code, section 1512,
22 subdivision (a)(1)(A); (viii) use of facility of interstate commerce in murder for hire in violation
23 of Title 18 of the United States Code, section 1958; and (ix) solicitation of a crime of violence in
24 violation of Title 18 of the United States Code, section 373.

25 b. As a result of Respondent's guilty plea, on or about April 16, 2013, the court
26 entered judgment sentencing Respondent to the custody of the United States Bureau of Prisons
27 for a term of 286 months. Upon release from prison, Respondent was ordered to complete three
28 years supervised release on the following conditions: not possess or use any unlawful controlled
substance, submit to random drug tests, not possess any firearm, ammunition or other dangerous

1 weapon, submit to DNA sampling, and comply with additional standard and special terms of
2 supervision, including that Respondent shall not engage in the employment or profession
3 involving fiduciary responsibility, and not contact victims or their families. Respondent was
4 furthered ordered to provide restitution in the amount of \$14,094,833.09 to his victims, including
5 his clients and the Internal Revenue Service (IRS) and California Franchise Tax Board (FTB).
6 Furthermore, Respondent was ordered to forfeit all real property, funds, interest in boat, airplane
7 and limousine, and sums of money in the amount of \$11,000,000, and funds equal to the proceeds
8 derived directly or indirectly from his criminal offenses, including witness tampering.

9 c. The facts that led to the conviction are that Respondent, starting at unknown date and
10 continuing up to at least October 15, 2008, schemed to defraud his clients, the IRS and FTB by
11 opening bank accounts in the names of various nominee entities, and then preparing both federal
12 and state tax returns for his clients indicating that the taxpayers owed substantial amounts of taxes
13 to the IRS and FTB. Respondent then instructed his clients to pay the taxes owed to the IRS and
14 FTB by making checks payable to the nominee bank accounts. Respondent falsely represented to
15 his clients that their deposits would be forwarded to the IRS and FTB. Instead, Respondent
16 diverted millions of dollars from these nominee accounts to his personal use rather than to the
17 IRS and FTB. As a further part of his scheme, Respondent prepared bogus tax returns for his
18 clients, fraudulently using their names, social security numbers, and other identification, showing
19 a lower amount of tax due and owing. Without his clients' knowledge, Respondent submitted the
20 bogus tax returns to the IRS and FTB in lieu of the original returns presented and provided to the
21 taxpayers.

22 d. By these fraudulent schemes, and his use of the mails and wires, Respondent
23 fraudulently obtained more that \$11,000,000, which Respondent failed to report on his personal
24 tax return. Respondent thereby defrauded the IRS and FTB out of more than \$11,000,000 in
25 taxes due and owing and estimated tax payments.

26 e. After Respondent was indicted, Respondent did attempt to kill and murder four
27 people, identified in the indictment as "M.H.," "S.H.," "M.S.," and "J.D.S.," with the intent to
28 prevent their attendance and testimony in the trial of *U.S. v. Martinez*. To commit these crimes,

1 Respondent offered to hire and pay a person sums of money to kill the aforementioned witnesses,
2 all in violation of California Penal Code section 187, and Title 18, United States Code, sections
3 1512(A)(1)(a) and 1958 and 2.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Dishonesty, Fraud)**

6 16. Respondent has subjected his license to disciplinary action under section 5100,
7 subdivision (c) of the Code in that he knowingly engaged in acts of dishonesty and fraud, as
8 described in paragraph 15 above.

9 **THIRD CAUSE FOR DISCIPLINE**

10 **(Fiscal Dishonesty and Breach of Fiduciary Duty)**

11 17. Respondent has subjected his license to disciplinary action under section 5100,
12 subdivision (i) of the Code in that he knowingly engaged in fiscal dishonesty and/or breaches of
13 fiduciary duty by preparation of false tax returns with the intent to defraud his clients, the IRS and
14 FTB, as described in paragraph 15 above.

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Fraudulent Reports)**

17 18. Respondent has subjected his license to disciplinary action under section 5100,
18 subdivision (j) of the Code in that he knowingly participated in the preparation, publication,
19 and/or dissemination of false, fraudulent, or materially misleading reports and tax returns to the
20 IRS, FTB and his clients, as described in paragraph 15 above.

21 **FIFTH CAUSE FOR DISCIPLINE**

22 **(Embezzlement, Theft, Misappropriation of Funds)**

23 19. Respondent has subjected his license to disciplinary action under section 5100,
24 subdivision (k) of the Code in that he knowingly engaged in embezzlement, theft,
25 misappropriation of funds or property or obtaining money or property or other valuable
26 consideration by fraudulent means or false pretenses, as described in paragraph 15 above.

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1 SIXTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 20. Respondent has subjected his license to disciplinary action under section 5100 of the
4 Code for unprofessional conduct in that he attempted to kill and murder witnesses in his criminal
5 proceeding, *U.S. v. Martinez*, as set forth in paragraph 15 above.

6 SEVENTH CAUSE FOR DISCIPLINE

7 (Failure to Report April 16, 2013 Criminal Conviction)

8 21. Respondent has subjected his license to disciplinary action under section 5100,
9 subdivision (g) of the Code when he failed to report his felony conviction, as described in
10 paragraph 15, above, within 30 days of its occurrence, as required by section 5063.

11 PRAYER

12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the California Board of Accountancy issue a decision:

14 1. Revoking or suspending or otherwise imposing discipline upon Certified Public
15 Accountant Certificate Number 64798, issued to Steven Martinez;

16 2. Ordering Steven Martinez to pay the California Board of Accountancy the reasonable
17 costs of the investigation and enforcement of this case, pursuant to Business and Professions
18 Code section 5107;

19 3. Taking such other and further action as deemed necessary and proper.
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22 DATED: May 17, 2013

Patti Bowers
PATTI BOWERS
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

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